

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Juliet Sebold and Monica Colbert
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: April 2, 2019
SUBJECT: Proposed initiative measure 2019-2020 #72, concerning expanded learning opportunities and a tax on nicotine products

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

This initiative was submitted with a series of initiatives including proposed initiatives 2019-2020 #68 through #75. The comments and questions raised in this memorandum will not include comments and questions that were addressed in the memoranda for proposed initiatives 2019-2020 #68 to #71, and #73 through #75, except as necessary to fully understand the issues raised by the revised proposed initiative. Comments and questions addressed in those other memoranda may also be relevant, and those questions and comments are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. To create the "Colorado Expanded Learning Opportunities Program", (program) to be administered by a newly created Expanded Learning Opportunities Agency (agency) within the Colorado Department of Education.
2. To create the board of directors for the agency.
3. To create or contract with a Colorado nonprofit organization to administer the program, and to create a volunteer board of directors for the administering nonprofit organization.
4. To provide money to eligible students in individual learning accounts controlled by eligible students' parents pursuant to rules created by the agency.
5. To allow eligible students to use the financial aid for out-of-school learning experiences that take place outside of normal school hours for programs, materials, activities, and other pursuits or purchases which may include, in part, tutoring, supplemental academic instruction in core subject areas, targeted support for special needs and learning disabilities and outdoor activities that teach youth new skills.
6. To create and develop criteria for the selection of allowable uses for the financial aid and for certifying providers of out-of-school learning experiences.
7. To authorize the state to retain and spend state revenue in excess of the state fiscal year spending limitations pursuant to TABOR, in an amount equal to any appropriation to the agency.
8. To allow a credit against any state income tax imposed on monetary and in-kind contributions to a nonprofit organization selected to administer the "Colorado Expanded Learning Opportunities Program".
9. To implement a cap on the total amount of income tax credits allowed in any state fiscal year for contributions to a nonprofit organization selected to administer the "Colorado Expanded Learning Opportunities Program" and to specify the circumstances under which the cap may increase in any state fiscal year until a maximum cap is reached.

10. To require the General Assembly to reduce the total amount of other income tax credits allowed to taxpayers by an amount at least equal to the credits claimed and allowed by the measure.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
2. This proposed initiative #72 differs from proposed initiative #68 in three instances, which are: 1) The addition of language stating that by their vote in favor of the proposed initiative, the voters authorize the state to retain excess state revenues in an amount equal to any appropriations to the Expanded Learning Opportunities Agency (Agency) for the 2020-21 state fiscal year and each fiscal year thereafter; 2) The addition of an appropriations clause; and 3) The elimination of the nicotine tax established in initiatives #68 through #71.

Regarding voter authorization:

- a. Is approval of this provision a voter-approved revenue change to allow the state to retain and spend revenue that it would otherwise be required to refund under section (7)(d) of article X of the state constitution (TABOR)? In common parlance, would the measure de-Bruce the amount specified?
- b. To what does "any other law" refer?
- c. Through the authority the voters conferred when they approved Referendum C, the state is permitted to retain and spend revenue up to the excess state revenues cap. As such, it appears that this provision would only allow the state to retain and spend more revenues when the state revenue would otherwise be above the excess state revenues cap. Is that correct?
- d. Does this provision otherwise impact the amount of revenue that the state may retain and spend under Referendum C?
- e. There is pending legislation (House Bill 19-1257) that would allow the state to retain and spend all state revenues that would otherwise have to be refunded under subsection (7)(d) of TABOR. If that bill and this

initiative were both approved by voters, how would the two measures work together?

- f. An appropriation is spending authority, not the amount actually expended, and an agency may spend less than the amount authorized through an appropriation. Based on the plain language of this provision, the voter-approved revenue change is equal to the appropriation amount, not the amount expended. Is that correct?
- g. Is there any limitation on the amount the general assembly may appropriate, and therefore, the amount of the voter-approved revenue change?
- h. Could the general assembly inflate the appropriation to the agency to avoid refunding money and spend it on other programs?
- i. Is it your intent that this measure be referred to the voters at the 2019 ballot because this language is a state matter arising under TABOR as defined in section 1-41-102 (4)(d)?

Regarding the appropriations clause:

- j. The last section in the proposed initiative is an appropriation clause. Appropriation clauses are nonstatutory clauses added to legislation enacted by the General Assembly to amend the general appropriation act. If your intent is for the General Assembly to appropriate money for certain fiscal years for purposes of proposed article 89.1 of title 22, the proponents should consider creating a statutory appropriation section in proposed article 89.1 of title 22. For an example of a statutory appropriation section, see section 22-20-114 (2)(a)(I), C.R.S., although it may be more appropriate to reference the "state fiscal year" instead of the "budget year".

Technical Comments

There are no new technical comments.